IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1104 of 2007
To
FIRST APPEAL No. 1117 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE SPL. LAND ACQ. OFFICER & 1 - Appellants
Versus
RAMJIBHAI HIRABHAI VANKAR - Respondent

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Appearance :

FIRST APPEAL Nos. 1104/07 to 1111/07

MR SUNIT S.SHAH, GOVERNMENT PLEADER for Appellants
MR GM AMIN for Respondent/claimants

FIRST APPEAL Nos. 1112/07 to 1117/07

MS MINI NAIR, A.G.P. for Appellants

MR GM AMIN for respondent/claimants.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 27/02/2007

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.G.M.Amin, learned Counsel, waives service of notice on behalf of the claimant/s in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ["the Act" for short] read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common award dated October 29, 2005 rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (Rural) at Navrangpura, in Land Acquisition Cases No. 2642 to 2655 of 1996, by which the claimants have been awarded additional amount of compensation at the rate of Rs.63/- Ps. per sq.mt. for their acquired lands, over and above the compensation awarded to them at the rate of Rs. 1.50 ps. per sq.mt. for irrigated lands and Rs.1.00 ps. for non-irrigated

lands by the Special Land Acquisition Officer vide award dated May 30, 1996.

3. The Executive Engineer, Narmada Project Saurashtra Branch Canal, Div.No.2/4, Bhavnagar proposed to the State Government to acquire agricultural lands of village Dhandhuka, Taluka : Dhandhuka, District : Ahmedabad, for the public purpose of construction of canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of village Dhandhuka as specified in the said proposal were likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on June 4, 1993. Thereafter inquiry was made under Section 5A(2) of the Act and on receipt of the inquiry report from the Special Land Acquisition Officer, the State Government made declaration under Section 6 of the Act, which was published in the Official Gazette on June 1, 1994. The interested persons were thereafter served with

notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 100/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated May 30, 1996 offered compensation to the claimants at the rate of Rs. 1.50 ps. per sq.mt. for irrigated lands and Rs. 1.00 ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made to them by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Case Nos. 2642 to 2655 of 1996.

4. On behalf of the claimants, Mr. Adambhai Musabhai was examined at Exh.20. The witness claimed in his testimony that village Dhandhuka was a Taluka Headquarter and was fully developed. According to him, the lands acquired were highly fertile and as water was available in abundance, each claimant was able to raise crops of cotton, juvar, cumin-seeds, til, wheat etc. thereon, and was earning Rs. 40,000/- per bigha per year from the sale of agricultural produces. The witness mentioned that earlier also lands from this very village were acquired for which the Reference Court had awarded compensation to the claimants at the rate of Rs.52.50 ps. per sq.mt. and therefore, on the basis of the said previous award, the claimants were entitled to enhanced compensation. Though this witness was cross-examined by the learned Counsel for the acquiring-authorities, nothing substantial could be elicited, nor the assertion made by the witness that earlier from this very village lands were acquired and the claimants therein were

awarded compensation at the rate of Rs. 52.50 Ps. per sq.mt., could be demonstrated to be untrue.

5. On behalf of the acquiring authorities, witness Abdulbhai Aslamji Patel was examined at Exh.23. From his testimony, it is evident that at the time of giving deposition, he was discharging duties as Deputy Executive Engineer, Dhandhuka. According to him, the Special Land Acquisition Officer had taken into consideration all the relevant factors while determining the amount of compensation payable to the claimants and, therefore, the claimants were not entitled to enhanced compensation. However, in cross-examination, it was admitted by him that he has no personal knowledge about the proceedings initiated for acquiring the lands in the instant case. It was further admitted by him that he was deposing before the Court on the basis of official record available with him.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion

that the previous award of the Reference Court relating to the lands of this very village, was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. The learned Judge noticed that notification under Section 4(1) of the Act was published in the Official Gazette on January 7, 1991 for acquiring the lands earlier from this village; whereas in the instant case, notification under Section 4(1) of the Act was published in the Official Gazette on June 4, 1993, and in view of time-gap of about three years, the claimants were entitled to reasonable rise in price of lands at the rate of 10% per annum. On the basis of the previous award of the Reference Court relating to the lands of this very village, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.63/- ps. per sq.mt. by the impugned award, giving rise to the above-numbered appeals.

7. This Court has heard Ms. Mini Nair, learned Assistant Government Pleader for the appellants, and Mr.G.M.Amin, learned Counsel for the claimants, at length and in great detail. This Court has also considered the paper-book supplied by the learned Counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court. It is true that the claimants could not make good their assertion that each claimant was earning Rs.40,000/- per bigha per year from the sale of agricultural produces. However, the record does not indicate that the enhanced compensation was claimed by the claimants on the basis of yield obtained from the acquired lands. The record also does not indicate that the enhanced compensation was claimed by the claimants on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of this very village, which was produced at Exh.15. The perusal of Exh.15

indicates that the lands of Dhandhuka town were acquired for the public purpose of construction of residential and non-residential quarters pursuant to publication of notification issued under Section 4(1) of the Act in the Official Gazette on January 7, 1991. Therein, the Land Acquisition Officer by his award dated April 8, 1993 awarded compensation to the claimants at the rate of Rs. 33.30 ps. per sq.mt. Feeling aggrieved by the said offer, the claimants had sought reference. Accordingly, reference was made to the District Court, Ahmedabad (Rural), where it was numbered as Land Acquisition Case No.775 of 1995. In the said case, on behalf of the claimants, witness Alimahamad Adambhai was examined at Exh.30, whereas on behalf of the acquiring authorities, witness Narendrabhai Narandas Bhavsar was examined at Exh.34. On appreciation of evidence adduced by the parties, the Reference Court by judgment and award dated April 24, 2002 awarded additional amount of compensation to the claimants at the rate of

Rs.19.20 Ps. per sq.mt. Mr.G.M.Amin, learned Counsel for the claimants states at the Bar that the above-referred to award of the Reference Court awarding additional amount of compensation to the claimants at the rate of Rs.19.20 ps. per sq.mt. is accepted by the acquiring authorities and was not challenged before higher forum. The statement made at the Bar by the learned Counsel for the claimants is not controverted by the learned Assistant Government Pleader for the appellants. It is well-settled that previous award of the Reference Court relating to the lands of a village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining market value of similar lands acquired from the same village subsequently. On the facts and in the circumstances of the case, this Court is of the opinion that the Reference Court did not commit any error in placing reliance upon the previous award of the Reference Court relating to the lands of this very village for the purpose of

determining market value of the lands acquired in the instant case. On reappreciation of evidence adduced by the parties, this Court finds that correct findings of facts have been recorded by the Reference Court to which well-settled principles of law have been applied. The learned Assistant Government Pleader for the appellants could not persuade this Court to take a view different than the one taken by the Reference Court on appreciation of evidence adduced by the parties. Therefore, the appeals, which lack merits, deserve to be dismissed.

For the foregoing reasons, the instant appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J.]

(patel)